THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :20783 2007

DATED:04-10-2007

BETWEEN:

Dr.Pinjala Prabhavathi & 3 others.

..... PETITIONERS

AND

The Tahsildar,
Lakkavarpukota Mandal,
Vizianagaram District & another.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioners as well as the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioners seek a writ of mandamus declaring the action of the 1st respondent in attempting to dispossess the petitioners from their land covered by the impugned show cause notice under Section 7 of the Land Encroachment Act, 1905 (for brevity, 'the act') in an extent of Ac.3.78 cents in Sy.Nos.128, 129-4, 129-16 of Talari village of L.Kota mandal, Vizianagaram District to the husband of the 1st petitioner, without issuing any notice to the petitioners, without conducting any enquiry, and without passing any order under Section 6 of the Act, as illegal and arbitrary.

3. It is the case of the petitioners that they are the owners and possessors of the agricultural lands in an extent of Ac.60.00 cents in Survey Nos.94 to 96 and 126, 127 and 129 of Talari village, L.Kota mandal, Vizianagaram District. It is stated that an extent of Ac.3.78 cents i.e., Ac.3.20 cents in Sy.No.128; Ac.0.16 cents in Sy.No.129-4; and Ac.0.42 cents in Sy.No.129-16, is also part of their land but they have not encroached the same. It is stated that notice, dated 06-09-2007, under Section 7 of the Act has been issued in the name of the

husband of the 1st petitioner, namely Bhaskararao, who is out of Country, and the said notice has been received by the petitioners on
21-09-2007 and the petitioners submitted explanation, dated 27-09-2007, but without conducting enquiry and without passing any order under Section 6 of the Act respondents are threatening to dispossess the petitioners.

4. It is stated that previously when the respondents have made an attempt to lay a water pipeline through the lands of the petitioners, petitioners along with the said Bhaskara Rao filed W.P.No.18669 of 2007 and this Court by order, dated 14-09-2007, disposed of the said Writ Petition directing the respondents that if they are proposed to lay any water pipeline through the lands of the petitioners, they can do so only after resorting due process of law or after obtaining the permission of the petitioners, but however if the said land in question is an encroached land it is always open for the respondents to take action under the Act and accordingly issued a notice, dated
06-07-2007. As the explanation was already submitted by the petitioners claiming that the said land belongs to them and it is not an encroached land, I am of the opinion that without passing an order in accordance with law under Section 6 of the Act petitioners cannot be dispossessed.

5. Accordingly, Writ Petition is disposed of directing the 1st respondent to consider the explanation of the petitioners and pass appropriate orders in accordance with law and until the eviction orders are passed under Section 6 of the Act *status quo* obtaining as on today with regard to possession of the lands

of an extent of Ac.3.78 cents in Sy.No.128, 129-4, 129-16 of Talari village, L.Kota mandal, Vizianagaram District shall be maintained. No order as to costs.

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V.ESWARAIAH,J

04th October, 2007.

Note:

Issue operative portion of
the order by wire at party's costs.

B/o

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